Senate

General Assembly

File No. 275

February Session, 2014

Substitute Senate Bill No. 243

Senate, April 2, 2014

The Committee on Labor and Public Employees reported through SEN. HOLDER-WINFIELD of the 10th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING ELIGIBILITY FOR UNEMPLOYMENT BENEFITS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 31-225a of the 2014 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective January 1, 2015*):

(a) As used in this chapter, "qualified employer" means each employer subject to this chapter whose experience record has been chargeable with benefits for at least one full experience year, with the exception of employers subject to a flat entry rate of contributions as provided under subsection (d) of this section, employers subject to the maximum contribution rate under subsection (c) of section 31-273, and reimbursing employers; "contributing employer" means an employer who is assigned a percentage rate of contribution under the provisions of this section; "reimbursing employer" means an employer liable for payments in lieu of contributions as provided under section 31-225;

"benefit charges" means the amount of benefit payments charged to an employer's experience account under this section; "computation date" means June thirtieth of the year preceding the tax year for which the contribution rates are computed; "tax year" means the calendar year immediately following the computation date; "experience year" means the twelve consecutive months ending on June thirtieth; and "experience period" means the three consecutive experience years ending on the computation date, except that if the employer's account has been chargeable with benefits for less than three years, the experience period shall consist of the greater of one or two consecutive experience years ending on the computation date.

(b) (1) The administrator shall maintain for each employer, except reimbursing employers, an experience account in accordance with the provisions of this section. (2) With respect to each benefit year commencing on or after July 1, 1978, regular and additional benefits paid to an individual shall be allocated and charged to the accounts of the employers who paid **[**him**]** the individual wages in his or her base period in accordance with the following provisions: The initial determination establishing a claimant's weekly benefit rate and maximum total benefits for his or her benefit year shall include, with respect to such claimant and such benefit year, a determination of the maximum liability for such benefits of each employer who paid wages to the claimant in his or her base period. An employer's maximum total liability for such benefits with respect to a claimant's benefit year shall bear the same ratio to the maximum total benefits payable to the claimant as the total wages paid by the employer to the claimant within his or her base period bears to the total wages paid by all employers to the claimant within his or her base period. This ratio shall also be applied to each benefit payment. The amount thus determined, rounded to the nearest dollar with fractions of a dollar of exactly fifty cents rounded upward, shall be charged to the employer's account.

(c) (1) (A) Any week for which the employer has compensated the claimant in the form of wages in lieu of notice, dismissal payments or

any similar payment for loss of wages shall be considered a week of employment for the purpose of determining employer chargeability. (B) No benefits shall be charged to any employer who paid wages of (i) five hundred dollars or less to the claimant in his or her base period, if such base period commenced prior to January 1, 2015, or (ii) one thousand dollars or less to the claimant in his or her base period, if such base period commenced on or after January 1, 2015. (C) No dependency allowance paid to a claimant shall be charged to any employer. (D) In the event of a natural disaster declared by the President of the United States, no benefits paid on the basis of total or partial unemployment which is the result of physical damage to a place of employment caused by severe weather conditions including, but not limited to, hurricanes, snow storms, ice storms or flooding, or fire except where caused by the employer, shall be charged to any employer. (E) If the administrator finds that (i) an individual's most recent separation from a base period employer occurred under conditions which would result in disqualification by reason of subdivision (2), (6) or (9) of subsection (a) of section 31-236, or (ii) an individual was discharged for violating an employer's drug testing policy, provided the policy has been adopted and applied consistent with sections 31-51t to 31-51aa, inclusive, section 14-261b and any applicable federal law, no benefits paid thereafter to such individual with respect to any week of unemployment which is based upon wages paid by such employer with respect to employment prior to such separation shall be charged to such employer's account, provided such employer shall have filed a notice with the administrator within the time allowed for appeal in section 31-241. (F) No base period employer's account shall be charged with respect to benefits paid to a claimant if such employer continues to employ such claimant at the time the employer's account would otherwise have been charged to the same extent that he employed him during the individual's base period, provided the employer shall notify the administrator within the time allowed for appeal in section 31-241. (G) If a claimant has failed to accept suitable employment under the provisions of subdivision (1) of subsection (a) of section 31-236 and the disqualification has been

imposed, the account of the employer who makes an offer of employment to a claimant who was a former employee shall not be charged with any benefit payments made to such claimant after such initial offer of reemployment until such time as such claimant resumes employment with such employer, provided such employer shall make application therefor in a form acceptable to the administrator. The administrator shall notify such employer whether or not his or her application is granted. Any decision of the administrator denying suspension of charges as herein provided may be appealed within the time allowed for appeal in section 31-241. (H) Fifty per cent of benefits paid to a claimant under the federal-state extended duration unemployment benefits program established by the federal Employment Security Act shall be charged to the experience accounts of the claimant's base period employers in the same manner as the regular benefits paid for such benefit year. (I) No base period employer's account shall be charged with respect to benefits paid to a claimant who voluntarily left suitable work with such employer (i) to care for a seriously ill spouse, parent or child or (ii) due to the discontinuance of the transportation used by the claimant to get to and from work, as provided in subparagraphs (A)(ii) and (A)(iii) of subdivision (2) of subsection (a) of section 31-236. (J) No base period employer's account shall be charged with respect to benefits paid to a claimant who has been discharged or suspended because the claimant has been disqualified from performing the work for which he or she was hired due to the loss of such claimant's operator license as a result of a drug or alcohol testing program conducted in accordance with section 14-44k, 14-227a or 14-227b, regardless of whether such testing program was conducted while the claimant was off duty.

(2) All benefits paid which are not charged to any employer shall be pooled.

(3) The noncharging provisions of this chapter, except subdivisions (1)(D) and (1)(F) of this subsection, shall not apply to reimbursing employers.

(d) The standard rate of contributions shall be five and four-tenths per cent. Each employer who has not been chargeable with benefits, for a sufficient period of time to have his or her rate computed under this section shall pay contributions at a rate that is the higher of (1) one per cent, or (2) the state's five-year benefit cost rate. For purposes of this subsection, the state's five-year benefit cost rate shall be computed annually on or before June thirtieth and shall be derived by dividing the total dollar amount of benefits paid to claimants under this chapter during the five consecutive calendar years immediately preceding the computation date by the five-year payroll during the same period. If the resulting quotient is not an exact multiple of one-tenth of one per cent, the five-year benefit cost rate shall be the next higher such multiple.

(e) (1) As of each June thirtieth, the administrator shall determine the charged tax rate for each qualified employer. Said rate shall be obtained by calculating a benefit ratio for each qualified employer. The employer's benefit ratio shall be the quotient obtained by dividing the total amount chargeable to the employer's experience account during the experience period by the total of his or her taxable wages during such experience period which have been reported by the employer to the administrator on or before the following September thirtieth. The resulting quotient, expressed as a per cent, shall constitute the employer's charged tax rate. If the resulting quotient is not an exact multiple of one-tenth of one per cent, the charged rate shall be the next higher such multiple, except that if the resulting quotient is less than five-tenths of one per cent, the charged rate shall be five-tenths of one per cent and if the resulting quotient is greater than five and four-tenths per cent, the charged rate shall be five and four-tenths per cent. The employer's charged tax rate will be in accordance with the following table:

T1 Employer's Charged Tax Rate Table

T2 Employer's Charged

T3	Employer's Benefit Ratio	Tax Rate
T4	.005 or less	.5% minimum subject
T5	.006	.6% to fund
T6	.007	.7% solvency
T7	.008	.8% adjustment
T8	.009	.9%
T9	.010	1.0%
T10	.011	1.1%
T11	.012	1.2%
T12	.013	1.3%
T13	.014	1.4%
T14	.015	1.5%
T15	.016	1.6%
T16	.017	1.7%
T17	.018	1.8%
T18	.019	1.9%
T19	.020	2.0%
T20	.021	2.1%
T21	.022	2.2%
T22	.023	2.3%
T23	.024	2.4%

T24	.025	2.5%
T25	.026	2.6%
T26	.027	2.7%
T27	.028	2.8%
T28	.029	2.9%
T29	.030	3.0%
T30	.031	3.1%
T31	.032	3.2%
T32	.033	3.3%
T33	.034	3.4%
T34	.035	3.5%
T35	.036	3.6%
T36	.037	3.7%
T37	.038	3.8%
T38	.039	3.9%
T39	.040	4.0%
T40	.041	4.1%
T41	.042	4.2%
T42	.043	4.3%
T43	.044	4.4%
T44	.045	4.5%

T45	.046	4.6%
T46	.047	4.7%
T47	.048	4.8%
T48	.049	4.9%
T49	.050	5.0%
T50	.051	5.1%
T51	.052	5.2%
T52	.053	5.3%
T53	.054 & higher	5.4% maximum subject
T54		to fund solvency
T55		adjustment

(2) (A) Each contributing employer subject to this chapter shall pay an assessment to the administrator at a rate established by the administrator sufficient to pay interest due on advances from the federal unemployment account under Title XII of the Social Security Act (42 U.S. Code Sections 1321 to 1324). The administrator shall establish the necessary procedures for payment of such assessments. The amounts received by the administrator based on such assessments shall be paid over to the State Treasurer and credited to the General Fund. Any amount remaining from such assessments, after all such federal interest charges have been paid, shall be transferred to the Employment Security Administration Fund or to the Unemployment Compensation Advance Fund established under section 31-264a, (i) to the extent that any federal interest charges have been paid from the Unemployment Compensation Advance Fund, (ii) to the extent that the administrator determines that reimbursement is appropriate, or (iii) otherwise to the extent that reimbursement of the advance fund is the appropriate accounting principle governing the use of the

assessments. Sections 31-265 to 31-274, inclusive, shall apply to the collection of such assessments.

(B) On and after January 1, 1994, and conditioned upon the issuance of any revenue bonds pursuant to section 31-264b, each contributing employer shall also pay an assessment to the administrator at a rate established by the administrator sufficient to pay the interest due on advances from the Unemployment Compensation Advance Fund and reimbursements required for advances from the Unemployment Compensation Advance Fund, computed in accordance with subsection (h) of section 31-264a. The administrator shall establish the assessments as a percentage of the charged tax rate for each employer pursuant to subdivision (1) of this subsection. The administrator shall establish the necessary procedures for billing, payment and collection of the assessments. Sections 31-265 to 31-274, inclusive, shall apply to the collection of such assessments by the administrator. The payments received by the administrator based on the assessments, excluding interest and penalties on past due assessments, are hereby pledged and shall be paid over to the State Treasurer for credit to the Unemployment Compensation Advance Fund.

(f) (1) For each calendar year commencing with calendar year 1994 but prior to calendar year 2013, the administrator shall establish a fund balance tax rate sufficient to maintain a balance in the Unemployment Compensation Trust Fund equal to eight-tenths of one per cent of the total wages paid to workers covered under this chapter by contributing employers during the year ending the last preceding June thirtieth. If the fund balance tax rate established by the administrator results in a fund balance in excess of said per cent as of December thirtieth of any year, the administrator shall, in the year next following, establish a fund balance tax rate sufficient to eliminate the fund balance in excess of said per cent. For each calendar year commencing with calendar year 2013, the administrator shall establish a fund balance tax rate sufficient to maintain a balance in the Unemployment Compensation Trust Fund that results in an average high cost multiple equal to 0.5. Commencing with calendar year 2014 and ending with

calendar year 2018, the administrator shall establish a fund balance tax rate sufficient to maintain a balance in the Unemployment Compensation Trust Fund that results in an average high cost multiple that is increased by 0.1 from the preceding calendar year. Commencing with calendar year 2019, the administrator shall establish a fund balance tax rate sufficient to maintain a balance in the Unemployment Compensation Trust Fund that results in an average high cost multiple equal to 1.0. If the fund balance tax rate established by the administrator results in a fund balance in excess of the amount prescribed in this subdivision as of December thirtieth of any year, the administrator shall, in the year next following, establish a fund balance rate sufficient to eliminate the fund balance in excess of said amount. The assessment levied by the administrator at any time (A) during a calendar year commencing on or after January 1, 1994, but prior to January 1, 1999, shall not exceed one and five-tenths per cent, (B) during a calendar year commencing on or after January 1, 1999, shall not exceed one and four-tenths per cent, and shall not be calculated to result in a fund balance in excess of eight-tenths of one per cent of such total wages, and (C) during a calendar year commencing on or after January 1, 2013, shall not exceed one and four-tenths per cent and shall not be calculated to result in a fund balance in excess of the amounts prescribed in this subdivision.

(2) The average high cost multiple shall be computed as follows: The result of the balance of the Unemployment Compensation Trust Fund on December thirtieth immediately preceding the new rate year divided by the total wages paid to workers covered under this chapter by contributing employers for the twelve months ending on the December thirtieth immediately preceding the new rate year shall be the numerator and the average of the three highest calendar benefit cost rates in (A) the last twenty years, or (B) a period including the last three recessions, whichever is longer, shall be the denominator. Benefit cost rates are computed as benefits paid including the state's share of extended benefits but excluding reimbursable benefits as a per cent of total wages in covered employment. The results rounded to the next lower one decimal place will be the average high cost multiple.

(g) Each qualified employer's contribution rate for each calendar year after 1973 shall be a percentage rate equal to the sum of his or her charged tax rate as of the June thirtieth preceding such calendar year and the fund balance tax rate as of December thirtieth preceding such calendar year.

(h) (1) With respect to each benefit year commencing on or after July 1, 1978, notice of determination of the claimant's benefit entitlement for such benefit year shall include notice of the allocation of benefit charges of the claimant's base period employers and each such employer shall be mailed a copy of such notice of determination and shall be an interested party thereto. Such determination shall be final unless the claimant or any of such employers files an appeal from such decision in accordance with the provisions of section 31-241. (2) The administrator shall, not less frequently than once each calendar quarter, mail a statement of charges to each employer to whose experience record any charges have been made since the last previous such statement. Such statement shall show, with respect to each week for which benefits have been paid and charged, the name and Social Security account number of the claimant who was paid the benefit, the amount of the benefits charged for such week and the total amount charged in the quarter. (3) The statement of charges provided for in subdivision (2) of this subsection shall constitute notice to the employer that it has been determined that the benefits reported in such statement were properly payable under this chapter to the claimants for the weeks and in the amounts shown in such statements. If the employer contends that benefits have been improperly charged due to fraud or error, a written protest setting forth reasons therefor shall be filed with the administrator within sixty days of the mailing date of the quarterly statement. An eligibility issue shall not be reopened on the basis of such quarterly statement if notification of such eligibility issue had previously been given to the employer under the provisions of section 31-241, and he failed to file a timely appeal therefrom or had the issue finally resolved against him. (4) The provisions of subdivisions (2) and (3) of this subsection shall not apply to combined wage claims paid under subsection (b) of section 31-255. For such

combined wage claims paid under the unemployment law of other states, the administrator shall, each calendar quarter, mail a statement of charges to each employer whose experience record has been charged since the previous such statement. Such statement shall show the name and Social Security number of the claimant who was paid the benefits and the total amount of the benefits charged in the quarter.

(i) (1) At the written request of any employer which holds at least eighty per cent controlling interest in another employer or employers, the administrator may mingle the experience rating records of such dominant and controlled employers as if they constituted a single employer, subject to such regulations as the administrator may make and publish concerning the establishment, conduct and dissolution of such joint experience rating records. (2) The executors, administrators, successors or assigns of any former employer shall acquire the experience rating records of the predecessor employer with the following exception: The experience of a predecessor employer, who leased premises and equipment from a third party and who has not transferred any assets to the successor, shall not be transferred if there is no common controlling interest in the predecessor and successor entities. (3) The administrator is authorized to establish such regulations governing joint accounts as may be necessary to comply with the requirements of the federal Unemployment Tax Act.

(j) (1) Each employer subject to this chapter shall submit quarterly, on forms supplied by the administrator, a listing of wage information, including the name of each employee receiving wages in employment subject to this chapter, such employee's Social Security account number and the amount of wages paid to such employee during such calendar quarter.

(2) Commencing with the first calendar quarter of 2014, each employer subject to this chapter who reports wages for employees receiving wages in employment subject to this chapter, and each person or organization that, as an agent, reports wages for employees receiving wages in employment subject to this chapter on behalf of one

or more employers subject to this chapter shall submit quarterly the information required by subdivision (1) of this subsection on magnetic tape, diskette, or other similar electronic means which the administrator may prescribe, in a format prescribed by the administrator, unless such employer or agent receives a waiver pursuant to subdivision (5) of this subsection.

(3) Any employer that fails to submit the information required by subdivision (1) of this subsection in a timely manner, as determined by the administrator, shall be liable to the administrator for a late filing fee of twenty-five dollars. Any employer that fails to submit the information required by subdivision (1) of this subsection under a proper state unemployment compensation registration number shall be liable to the administrator for a fee of twenty-five dollars. All fees collected by the administrator under this subdivision shall be deposited in the Employment Security Administration Fund.

(4) Commencing with the first calendar quarter of 2014, each employer subject to this chapter who makes contributions or payments in lieu of contributions for employees receiving wages in employment subject to this chapter, and each person or organization that, as an agent, makes contributions or payments in lieu of contributions for employees receiving wages in employment subject to this chapter on behalf of one or more employers subject to this chapter shall make such contributions or payments in lieu of contributions electronically.

(5) Any employer or any person or organization that, as an agent, submits information pursuant to subdivision (2) of this subsection or makes contributions or payments in lieu of contributions pursuant to subdivision (4) of this subsection may request in writing, not later than thirty days prior to the date a submission of information or a contribution or payment in lieu of contribution is due, that the administrator waive the requirement that such submission or contribution or payment in lieu of contribution be made electronically. The administrator shall grant such request if, on the basis of information provided by such employer or person or organization and

on a form prescribed by the administrator, the administrator finds that there would be undue hardship for such employer or person or organization. The administrator shall promptly inform such employer or person or organization of the granting or rejection of the requested waiver. The decision of the administrator shall be final and not subject to further review or appeal. Such waiver shall be effective for twelve months from the date such waiver is granted.

(k) The employer may inspect his or her account records in the office of the Employment Security Division at any reasonable time.

Sec. 2. (NEW) (*Effective October 1, 2014*) (a) An employer who fails to provide any employee with notice of termination of employment in accordance with subdivision (1) of section 31-222-9 of the regulations of Connecticut state agencies may be liable to the Labor Department for a civil penalty of not greater than fifty dollars. For any subsequent violation of this subsection, such employer may be liable to the Labor Department for a civil penalty of not greater than one hundred dollars.

(b) The Attorney General, upon complaint of the Labor Commissioner, shall institute civil actions to recover the penalties provided for under subsection (a) of this section. Any amount recovered shall be deposited in the General Fund.

This act shall take effect as follows and shall amend the following sections:		
Section 1	*January 1, 2015*	31-225a
Sec. 2	*October 1, 2014*	New section

LAB *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 15 $	FY 16 $
Labor Dept.	GF - Potential Revenue Gain	Up to 3.6 million	Up to 9.7 million
Attorney General	GF - Potential Cost	Zero to 10,000	Zero to 10,000

Municipal Impact: None

Explanation

The bill creates a penalty for employers who fail to give an employee an unemployment notice as required by law, and establishes a civil penalty for violation of this provision. The bill also expands the circumstances under which a private sector worker can discharge or suspend an employee without affecting the employer's unemployment taxes. This results in a potential General Fund revenue gain of up to $3.6 million in FY 15 and up to $9.7 million annually thereafter, and a potential cost of zero to $10,000 annually to the Office of the Attorney General (OAG) beginning in FY 15.

The bill establishes a civil penalty of $50 for the first violation and $100 for subsequent violations for failing to provide proper unemployment notice. Based on information from the Department of Labor indicating that there were approximately 97,000 individuals who were separated from employment due to lack of work that were not provided the required notice last year, this results in a potential General Fund revenue gain of up to $3.6 million in FY 15 and up to $9.7 million annually thereafter.

The bill specifies that the OAG must initiate a civil suit to recover

penalties imposed under the bill upon request by the Labor Commissioner. The potential fiscal impact to OAG is a cost of zero to $10,000 annually beginning in FY 15 for potential litigation costs related to the recovery of these penalties.

The bill also expands the circumstances under which workers may be discharged without impacting an employer's unemployment taxes. This would not result in any fiscal impact to the Unemployment Compensation Fund (UCF) as these "non-charged" costs are combined and divided amongst all employers who pay unemployment taxes. Additionally, it is anticipated that any required conforming technical modifications to existing unemployment processes and forms would be covered by federal administrative grant funds, and thus would not result in a fiscal impact to the state.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

Sources: Department of Labor Unemployment Compensation Division

OLR Bill Analysis

sSB 243

AN ACT CONCERNING ELIGIBILITY FOR UNEMPLOYMENT BENEFITS.

SUMMARY:

This bill creates a penalty for employers who fail to give an employee an unemployment notice as required by state regulations (see BACKGROUND). It allows the labor department to impose a civil penalty of up to $50 for an initial violation and $100 for each subsequent violation. At the labor commissioner's request, the attorney general must initiate a civil suit to recover the penalties, which must be deposited in the General Fund.

The bill also expands the circumstances under which a private-sector employer can discharge or suspend an employee without affecting the employer's unemployment taxes. It creates a "non-charge" against an employer's experience rate (see BACKGROUND) for discharging or suspending an employee who (1) lost his or her driver's license because of a drug or alcohol testing program conducted under state laws prohibiting driving under the influence (DUI), regardless of whether the testing was conducted while the employee was off duty, and (2) as a result, is disqualified from performing the work for which he or she had been hired. (CGS § 14-44k disqualifies a person from operating a commercial motor vehicle for one year if he or she is convicted of a DUI.) In effect, this allows the discharged or suspended employee to collect unemployment benefits without increasing the employer's unemployment taxes.

Under current law, an employer's experience rate is not charged for a former employee collecting unemployment benefits if the employer paid the former employee $500 or less during the employee's base period (generally, the first four of the five quarters preceding the

employee's unemployment claim). For base periods starting on or after January 1, 2015, the bill increases this earnings threshold to $1,000. Thus, an employer's experience rate will not be charged if it paid a former employee $1,000 or less during the employee's base period.

The bill also makes technical changes.

EFFECTIVE DATE: October 1, 2014, except for the provisions related to non-charges, which are effective January 1, 2015.

BACKGROUND

Unemployment Notices

State regulations require all employers to provide their employees with a completed unemployment notice and employee information packet immediately upon layoff or separation from employment. The notice and packet must be provided regardless of (1) the reason the employee is leaving employment or (2) whether the employer is subject to the state's unemployment law. The notice form and packet are prepared by the labor commissioner and provided to employers upon request. They are also available online. The notice is used solely for filing claims for unemployment compensation benefits (Conn. Agencies Reg., § 31-222-9).

Among other things, the notice requires the employer to provide the employee's (1) employment dates and earnings and (2) reason for unemployment, which can be either "lack of work," "voluntary leaving," "discharge/ suspension," "leave of absence," or "other."

Unemployment Experience Rates and Non-Charges

In general, a significant portion of a private-sector employer's unemployment insurance taxes are based on the employer's "experience rate," which reflects the amount of unemployment benefits paid to the employer's former employees over a certain period of time. Typically, laying off employees leads to a higher experience rate, up to a statutorily defined limit, and thus higher unemployment taxes for the employer. The law, however, allows several non-charging

separations in which an employee can collect benefits without affecting a former employer's experience rate (e.g., voluntarily leaving work to care for a seriously ill spouse, parent, or child). In these instances, the benefits paid to the former employee are "pooled" and paid by all employers who pay unemployment taxes.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable Substitute
Yea 10 Nay 0 (03/18/2014)